

REMARKS

Forty-five claims are pending in the present Application. Claims 1-45 currently stand rejected. Claims 1, 5-7, 11, 15, 21, 25-27, 31, 35, and 42 are amended, and new claims 46-47 are added herein. Reconsideration of the Application in view of the foregoing amendments and the following remarks is respectfully requested.

35 U.S.C. § 102(e)

On page 4 of the Office Action, the Examiner rejects claim 45 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,701,058 to Tsubaki (hereafter Tsubaki). The Applicants respectfully traverse this rejection for at least the following reasons.

“For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be *identically* shown in a single reference.” *Diversitech Corp. v. Century Steps, Inc.*, 7 USPQ2d 1315, 1317 (CAFC 1988). The Applicants submit that Tsubaki fails to identically teach every element of the claims, and therefore does not anticipate the present invention.

With regard to claim 45, “means-plus-function” language is utilized to recite elements and functionality similar to those recited in claims 1 and 21 as discussed below. Applicants therefore incorporate those remarks by reference with regard to claim 45. In addition, the Courts have frequently held that “means-plus-function” language, such as that of claim 45, should be construed in light of the Specification. More specifically, means-plus-function claim elements

should be *construed to cover the corresponding structure, material or acts described in the specification*, and equivalents thereof.

Applicants specifically direct the Examiner's attention to Applicants' discussion of FIGS. 8-9 (Specification, page 15, line 29 through page 18, line 28) which describes in detail the Applicants' claimed "means for transferring said data from said means for capturing to said means for receiving." Applicants submit that, in light of the substantial differences between the teachings of Tsubaki and Applicants' invention as disclosed in the Specification, claim 45 is therefore not anticipated or made obvious by the teachings of Tsubaki.

35 U.S.C. § 103

On page 5 of the Office Action, the Examiner rejects claims 1-5, 21-25, and 43 under 35 U.S.C. § 103(a) as being anticipated by U.S. Patent No. 5,737,491 to Allen et al. (hereafter Allen) in view of Tsubaki. The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a) which requires that three basic criteria must be met, as set forth in M.P.E.P. §2142:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when

combined) must teach or suggest all the claim limitations” (emphasis added).

The initial burden is therefore on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner’s rejection of independent claims 1 and 21, Applicants respond to the Examiner’s §103 rejection as if applied to amended independent claims 1 and 21. For example, amended independent claim 1 now recites “*said transfer manager performing a repeat transfer procedure whenever said data destination fails to successfully receive said data, said transfer manager continuing to perform additional ones of said repeat transfer procedure until said data is successfully transferred to said data destination,*” which are limitations that are not taught or suggested either by the cited references, or by the Examiner’s citations thereto.

Allen teaches a camera that transmits images to a “fulfillment server” in response to voice commands that are recognized by a speech recognizer in the camera” (see column 1, lines 33-53). On page 5 of the Office Action, the Examiner concedes that “Allen is not found to disclose a transfer manager . . . automatically transferring said data if said data stored in said data buffers exceeds a predetermined threshold amount,” as claimed by Applicants. Applicants concur. The Examiner then points to Tsubaki to purportedly remedy these deficiencies.

Tsubaki teaches a camera that uploads images to a recorder device whenever remaining storage space in the camera is less than required for a

designated number of additional images. Tsubaki refers to the foregoing remaining storage space as “residual capacity” (see column 2, lines 7-10). Furthermore, Tsubaki quantifies the residual capacity/transfer-triggering threshold of the storage space in terms of the number of additional images that may be stored in the storage space.

In particular, Tsubaki “calculates the amount of the image data (i.e., the number of images) that the recording medium 13 can further record” (see step 16 of FIG. 3 and column 7, line 65 to column 8, line 12). Tsubaki therefore utilizes a threshold that is the “number of images” that may be additionally stored in the camera device. Tsubaki triggers an upload to the recorder device only if the number of additional images “becomes less than a predetermined threshold”, for example, five more images (column 2, lines 7-10).

In contrast, Applicants upload image data to a data destination when “said data stored in said data buffers is greater than a predetermined threshold amount that is freely selectable from any numerical value, said predetermined threshold amount being equal to said total amount of said data currently stored in said data buffers” (see claims 1 and 21). Applicants therefore compare “data stored” to a predetermined threshold that is freely selectable, and not limited to multiples of additional images, as taught by Tsubaki.

In addition, Applicants trigger an upload to the data destination when the data stored “is greater than a predetermined threshold amount”. Tsubaki therefore monitors a different parameter (“residual capacity” versus “data stored”) for triggering uploads. In furthermore, Tsubaki utilizes a directly opposite

criterium with respect to the monitored parameter for triggering an upload (“less than” versus “greater than”). Applicants therefore submit that Tsubaki fails to teach Applicants’ claimed invention.

In addition, as discussed above, Applicants submit that Tsubaki nowhere teaches “performing a repeat transfer procedure whenever said data destination fails to successfully receive said data, said transfer manager continuing to perform additional ones of said repeat transfer procedure until said data is successfully transferred to said data destination. For at least the foregoing reasons, Applicants therefore submit that independent claims 1 and 21 are not anticipated by the teachings of Allen and Tsubaki.

Regarding the Examiner’s rejection of dependent claims 2-5, 22-25, and 43, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested.

Furthermore, with regard to the Examiner’s rejection of dependent claims 5 and 25, Applicants respond to the Examiner’s §103 rejections as if applied to amended claims 5 and 25, which now recite a camera that is economically implemented with “*data buffers being implemented using a sub-standard memory-size configuration*” that is made possible because the camera’s transfer manager has the capability to perform data transfer procedures to advantageously offload data to a remote data destination whenever the small local data buffers become

full. Applicants submit that these limitations are not taught or suggested either by the cited references, or by the Examiner's citations thereto.

For at least the foregoing reasons, the Applicants submit that claims 1-5, 21-25, and 43 are not unpatentable under 35 U.S.C. § 103 over Allen in view of Tsubaki, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 1-5, 21-25, and 43 under 35 U.S.C. § 103.

On page 7 of the Office Action, the Examiner rejects claims 6-10, 12, 15, 17-18, 26-30, 32, 37-38, and 41 under 35 U.S.C. § 103 as being unpatentable over Allen in view of Tsubaki, and further in view of U.S. Patent No. 6,522,352 to Strandwitz et al. (hereafter Strandwitz). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations. The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Applicants respectfully traverse the Examiner's assertion that modification of the device of Allen and Tsubaki according to the teachings of Strandwitz would produce the claimed invention. Applicants submit that Allen and Tsubaki in combination with Strandwitz fail to teach a substantial number of the claimed

elements of the present invention. Furthermore, Applicants also submit that neither Allen, Tsubaki, nor Strandwitz contain teachings for combining the cited references to produce the Applicants' claimed invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C §103 are improper.

Regarding the Examiner's rejection of dependent claims 6-10, 12, 15, 17-20, 26-30, 32, and 37-40, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 6-10, 12, 15, 17-20, 26-30, 32, and 37-40, so that these claims may issue in a timely manner.

Furthermore, with regard to the Examiner's rejection of dependent claims 6 and 26, Applicants respond to the Examiner's §103 rejections as if applied to amended claims 6 and 26, which now recite "*an arbitration procedure . . . to transfer said data to said data destination, said transfer manager being authorized by said wireless communications network to perform said data transfer procedure when sufficient bandwidth is available on said wireless communications network for transferring a specified amount of said data.*" Applicants submit that these limitations are not taught or suggested either by the cited references, or by the

Examiner's citations thereto. Applicants therefore request that the rejections of claim 6 and 26 be reconsidered and withdrawn.

With regard to the rejections of claims 10 and 30, Applicants submit that the cited references nowhere teach or disclose providing "status information" regarding both "said data transfer procedure and said arbitration procedure by using a user interface . . .," as recited by Applicants in claims 10 and 30. Applicant therefore respectfully submits that the rejection of claims 10 and 30 under 35 U.S.C. § 103(a) is improper.

In addition, with regard to the rejections of claims 15 and 35, Applicants submit that the cited references fail to teach "said transfer manager responsively repeating said data transfer procedure to retransmit said data from said data buffers to said data destination until said data transfer procedure is successfully completed," as claimed by Applicants. On the contrary, Strandwitz explicitly states that "[i]f the receiver does not successfully receive video frame N before this deadline, the video frame is dropped" (column 8, lines 65-67).

With regard to the rejections of claim 41, Applicants submit that the cited references fail to teach "said imaging device is implemented without removable storage media capabilities," as claimed by Applicants. On the contrary, the cited section of Allen explicitly states that digital images may be stored in "a removable solid state memory card" (column 1, line 23).

For at least the foregoing reasons, the Applicants submit that claims 6-10, 12, 15, 17-20, 26-30, 32 and 37-40 are not unpatentable under 35 U.S.C. § 103 over the cited references, and that the rejections under 35 U.S.C. § 103 are thus

improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 6-10, 12, 15, 17-20, 26-30, 32, and 37-40 under 35 U.S.C. § 103.

On page 11 of the Office Action, the Examiner rejects claims 11 and 31 under 35 U.S.C. § 103 as being unpatentable over Allen in view of Tsubaki and Strandwitz, and further in view of U.S. Patent No. 5,128,776 to Scorse et al. (hereafter Scorse). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations. The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner's rejection of dependent claims 11 and 31, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 11 and 31, so that these claims may issue in a timely manner.

In addition, the Examiner states that Scorse discloses that “[e]ach block is checked for errors and if errors are found, the receiver sends a list of bad blocks back to the receiver requesting those be resent.” As the Examiner further states, Scorse therefore uses “a method of partial data transfer for the benefit of . . . detecting data transfer errors.” However, Applicants submit that the cited references nowhere teach “*said transfer manager, because of bandwidth limitations of said wireless communications network, performs an initial partial data transfer procedure to transfer only an initial portion of said data to said data destination, said transfer manager subsequently repeating said arbitration procedure and then performing a final partial data transfer procedure to transfer a final portion of said data to said data destination when sufficient additional bandwidth is available*,” as claimed by Applicants.

For at least the foregoing reasons, the Applicants submit that claims 11 and 31 are not unpatentable under 35 U.S.C. § 103 over the cited references, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 11 and 31 under 35 U.S.C. § 103.

On page 12 of the Office Action, the Examiner rejects claims 13 and 33 under 35 U.S.C. § 103 as being unpatentable over Allen in view of Tsubaki and Strandwitz, and further in view of U.S. Patent No. 6,058,304 to Callaghan et al. (hereafter Callaghan). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations. The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner's rejection of dependent claims 13 and 33, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 13 and 33, so that these claims may issue in a timely manner.

For at least the foregoing reasons, the Applicants submit that claims 13 and 33 are not unpatentable under 35 U.S.C. § 103 over the cited references, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 13 and 33 under 35 U.S.C. § 103.

On page 13 of the Office Action, the Examiner rejects claims 14 and 34-36 under 35 U.S.C. § 103 as being unpatentable over Allen in view of Tsubaki, Strandwitz, and Callaghan, and still further in view U.S. Patent No. 6,393,470 to

Kanevsky et al. (hereafter Kanevsky). The Applicants respectfully traverses these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations. The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner's rejection of dependent claims 13 and 33, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 13 and 33, so that these claims may issue in a timely manner.

In addition, on page 13 of the Office Action, the Examiner concedes that none of the references disclose "an imaging device also erasing said data from said data buffers in response to said transfer confirmation." Applicants concur. The Examiner then points to Kanevsky to purported remedy these deficiencies. Kanevsky teaches a network of servers that monitor portable electronic devices until one of the servers "detects that some embedded computer, e.g. (video) camera, is near full . . ." (see column , lines 14-15). In Kanevsky, when a server

detects that a camera is nearly full of image data, then “this server moves stored images to a storage server” (see column 2, lines 27-28). Kanevsky therefore discloses a “pull” operation in which an external server network monitors portable devices, and actively pulls the image data from the portable devices.

In contrast, Applicants affirmatively recite “a transfer manager of said imaging device for transferring said data from said imaging device to said data destination.” Unlike Kanevsky, Applicants’ explicitly recite the transfer manager of the imaging device “monitoring said data buffers, and transferring said data in a data transfer procedure if a total amount of said data stored in said data buffers is greater than a predetermined threshold amount.” Applicants thus disclose and claim a “push” operation in which the imaging device monitors its own memory storage level, and actively pushes the image data to a specified destination.

For at least the foregoing reasons, Applicants therefore submit that Kanevsky teaches away from Applicants’ invention. A prior art reference which teaches away from the presently claimed invention is “strong evidence of nonobviousness.” In re Hedges, 783 F.2d 1038, 228 U.S.P.Q. 2d 685 (Fed.Cir. 1987).

For at least the foregoing reasons, the Applicants submit that claims 14 and 34-36 are not unpatentable under 35 U.S.C. § 103 over the cited references, and that the rejections under 35 U.S.C. § 103 is thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claims 14 and 34-36 under 35 U.S.C. § 103.

On page 15 of the Office Action, the Examiner rejects claim 16 under 35 U.S.C. § 103 as being unpatentable over Allen in view of Tsubaki, Strandwitz, Callaghan, and Kanevsky. The Applicants respectfully traverses these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations. The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner's rejection of dependent claim 16, for at least the reasons that this claim is dependent from a respective independent claims whose limitations are not identically taught or suggested, the limitations of dependent claim 16, when viewed through or in combination with the limitations of the respective independent claim, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claim 16, so that this claim may issue in a timely manner.

On page 17 of the Office Action, the Examiner rejects claims 19-20 and 39-40 under 35 U.S.C. § 103 as being unpatentable over Allen in view of Tsubaki, Strandwitz, and Kanevsky. The Applicants respectfully traverses these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima*

facie case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations. The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner's rejection of dependent claims 19-20 and 39-40, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 19-20 and 39-40, so that these claims may issue in a timely manner.

On page 18 of the Office Action, the Examiner rejects claim 42 under 35 U.S.C. § 103 as being unpatentable over Allen in view of Tsubaki, and Kanevsky. The Applicants respectfully traverses these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations. The initial burden is on the Examiner to establish a *prima facie*

case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner's rejection of dependent claim 42, for at least the reasons that this claim is dependent from a respective independent claims whose limitations are not identically taught or suggested, the limitations of dependent claim 42, when viewed through or in combination with the limitations of the respective independent claim, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claim 42, so that this claim may issue in a timely manner.

On page 18 of the Office Action, the Examiner cites column 4, lines 54-67, of Kanevsky in support of the rejection of claim 42. This section of Kanevsky is limited to briefly describing that data "can be compressed and encrypted" by a hardware compression module." Applicants respectfully submit that this section of Kanevsky nowhere teaches a "conversion software module for converting said data from a first format that is compatible with said imaging device into a second format that is compatible with said data destination, said first format being incompatible with said data destination" as claimed by Applicants

In addition, as discussed above in conjunction with claims 13 and 33, Applicants submit that Kanevsky discloses a "pull" operation, while Applicants disclose and claim a "push" operation in which the imaging device monitors its own memory storage level, and actively pushes the image data to a specified destination. Applicants therefore submit that Kanevsky teaches away from Applicants' invention. A prior art reference which teaches away from the

presently claimed invention is “strong evidence of nonobviousness.” In re Hedges, 783 F.2d 1038, 228 U.S.P.Q. 2d 685 (Fed.Cir. 1987).

For at least the foregoing reasons, the Applicants submit that claim 42 is not unpatentable under 35 U.S.C. § 103 over the cited references, and that the rejections under 35 U.S.C. § 103 is thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claim 42 under 35 U.S.C. § 103.

On page 18 of the Office Action, the Examiner rejects claim 44 under 35 U.S.C. § 103 as being unpatentable over Tsubaki in view of Examiner’s Official Notice. The Applicant respectfully traverses these rejections for at least the following reasons.

Applicant maintains that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations. The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Applicants submit that it would not have been obvious to a person of ordinary skill the art at the time of the invention to develop the claimed invention. In addition, Applicants submit that the only cited reference, Tsubaki, fails to disclose a specific software module, such as Applicants’ claimed “transfer module” for performing the claimed data transfers. Applicants therefore

respectfully request the Examiner to cite specific references in support of the Official Notice, and failing to do so, to reconsider and withdraw the rejections of claim 44, so that the present Application may issue in a timely manner.

Furthermore, the Court of Appeals for the Federal Circuit has held that "obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination." In re Geiger, 815 F.2d 686, 688, 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987). Applicants submit that the cited references, in combination with the Official Notice, do not suggest a combination that would result in Applicants' invention, and therefore the obviousness rejections under 35 U.S.C §103 are improper. Applicants therefore respectfully request the Examiner to cite references in support of the Official Notice, and to also indicate where an explicit teaching to combine the cited references may be found.

For at least the foregoing reasons, the Applicants submit that claim 44 is not unpatentable under 35 U.S.C. § 103 over the cited reference, and that the rejection under 35 U.S.C. § 103 is thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claim 44 under 35 U.S.C. § 103.

New Claims

The Applicants herein submit additional claims 46-47 for consideration by the Examiner in the present Application. The new claims 46-47 recite specific detailed embodiments for implementation and utilization of Applicants' image pump, as disclosed and discussed in the Specification. Applicants submit that newly-added claims 46-47 contain a number of limitations that are not taught or suggested in the cited references. Applicants therefore respectfully request the Examiner to consider and allow new claims 46-47, so that these claims may issue in a timely manner.

Summary

Applicants submit that the foregoing amendments and remarks overcome the Examiner's rejections. Because the cited references, or the Examiner's citations thereto, do not teach or suggest the claimed invention, and in light of the differences between the claimed invention and the cited prior art, Applicants therefore submit that the claimed invention is patentable over the cited art, and respectfully request the Examiner to allow claims 1-47 so that the present Application may issue in a timely manner. If there are any questions concerning this amendment, the Examiner is invited to contact the Applicants' undersigned representative at the number provided below.

Respectfully submitted,

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